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UNCLAS SECTION 01 OF 02 KABUL 000243

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SUBJECT: CABINET PASSES ELECTION LAW TO PARLIAMENT WITHOUT
PARTY PROVISIONS

REF: KABUL 130

Summary

1. (SBU) The draft election law forwarded by the Cabinet to the Parliament on January 23 is essentially the same as the existing election law, retaining the single nontransferable voting (SNTV) system used in the 2005 parliamentary elections and incorporating no element of proportional representation (PR) favored by some parliamentary leaders, including Speaker Qanooni. It also prohibits candidates from running in two constituencies at the same time, a provision which would appear to prevent Qanooni from seeking a parliamentary seat and the presidency simultaneously if the elections are consolidated. The draft law is the first bid in the presidential-parliamentary negotiations that could lead to a consolidated election calendar in exchange for an element of proportional representation. Post continues to press for timely resolution of these issues within the scope of the Constitution.

Law Arrives at Parliament Without Party Provisions

2. (SBU) After months of internal deliberation, the Cabinet forwarded to the Parliament on January 23 the government's draft of the amended election law. Parliamentary leaders have said the law is a top legislative priority in its current term, which began on January 21. The draft law is little changed from the existing law used in the 2004/5 elections. It retains the single nontransferable voting (SNTV) system and incorporates no element of proportional representation (PR) favored by some parliamentary leaders, including Speaker Yunus Qanooni. The draft law does not explicitly permit candidates to list their party affiliation on the ballot, but neither is it forbidden as in the existing law.

3. (SBU) The draft law stipulates that no individual can run in more than one electoral constituency in the same election. While the wording is ambiguous, this could prevent Qanooni from running for a Parliamentary seat and the Presidency simultaneously if the elections are consolidated. No

candidates for any office can hold foreign citizenship, which in theory would exclude the several current MPs who are dual-nationals. Enforcement would be difficult.

Smaller Districts, Local Councils, Other Provisions

¶4. (SBU) The draft law, unlike the existing law, requires large provinces entitled to ten or more parliamentary seats on the basis of population to be sub-divided into smaller districts. (This includes at least Kabul, Nangarhar, Ghazni, Kandahar, Herat, and Mazar-e Sharif). Elections experts insist that smaller constituencies increase the representativeness of the elections, but the process of electoral district delineation can be controversial and burdensome. The draft law assigns this task to a commission comprised of representatives of the Independent Election Commission, the Central Statistical Office, and the Independent Directorate for Local Governance.

¶5. (SBU) Like the existing election law, the draft law includes provisions for the election of District and Village Councils, as well as Municipal Councils and Mayors, but it remains to be seen whether the government will implement these provisions in the 2009/10 election cycle. (Mayors are the only elected executives apart from the President in the Afghan constitutional structure. Like presidential elections, mayoral elections require the winner to receive over 50 percent of the vote, often necessitating a run-off, with implications for the election calendar.)

¶6. (SBU) The draft law explicitly calls for a voter list, which requires a voter registration. The law raises the

KABUL 00000243 002 OF 002

number of signatures required for candidates to stand for election (10,000 for President, 1,500 for Wolesi Jirga, 200-600 for Provincial Council depending on population). It seems to require disclosure of financial assets, but the language is incomplete and vague (Article 46: "Provision of information in relation to the moveable and non-moveable assets."). The draft law allows the IEC to suspend polling "if security or other unpredictable events or situations make the holding of an election impossible, or seriously threaten the legitimacy of an election."

Commission Prepares for Calendar Discussion

¶7. (SBU) The government continues to favor the consolidation of the elections in the fall of 2009, as reported reftel and in subsequent discussions with the IEC. Qanooni insists that he favors "on time" elections, making it clear that means following the cycle used in the last elections. This would mean presidential elections in 2009 and parliamentary in ¶2010. (It is not clear whether Qanooni would object to holding Presidential elections in the fall rather than the spring.)

¶8. (SBU) While the election system is determined by law, the election calendar is determined by the constitution, although this is subject to interpretation, which provides a little leeway. If there is a challenge to efforts to consolidate the calendar, resolution of the issue could trigger a constitutional convention which would be impossible to control. The informal commission (which will include Qanooni) called by President Karzai to establish a calendar consistent with the constitution has not yet met. The IEC chairman is out of the country for family reasons, and the parliament is tied down with elections for Parliamentary leadership positions. The calendar will not be set before the February meeting of the Joint Coordination and Monitoring Board (JCMB) in Tokyo.

A Grand Bargain Needed on the Calendar and Law

19. (SBU) The draft election law that emerged from the Cabinet lays out Karzai's position on how the elections should be conducted. There will be tough negotiations with Qanooni over the law, and we expect trade-offs on the issue of the law and the calendar. Most observers believe that Qanooni and the opposition he leads will accept a consolidated election calendar in exchange for an element of proportional representation introduced into the parliamentary elections. Post continues to press for timely resolution of these issues within the scope of the Constitution.

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